UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rapid Systems CC; Mainboard LLC; *and* Bradley Zetler,

plaintiffs,

- against -

C.D.S. Inc.; Jerome Marechaux; Diane Treat; Christelle Riot; Jerome Viollon; Christophe Racle; *and* CDS SARL,

defendants,

- and -

Isabelle Didier, *as judicial administrator ("administrateur judiciaire") of CDS SARL, assigned to perform this function by a decision of the Commercial Court of Paris dated May 22, 2017.*; *and*
Jean-Charles Demortier, *as creditors' representative ("mandataire judiciaire") of CDS SARL, assigned to perform this function by a decision of the Commercial Court of Paris dated May 22, 2017*,

nominal defendants.

Civil Action No. 17-4264

ECF CASE

JURY TRIAL DEMANDED

COMPLAINT FOR TRADEMARK INFRINGEMENT AND FALSE DESIGNATIONS OF ORIGIN UNDER THE LANHAM ACT, AND FOR COMMON LAW DEFAMATION AND UNFAIR COMPETITION

Plaintiffs, Rapid Systems CC, Mainboard LLC, and Bradley Zetler (collectively "Plaintiffs" or "Mainboard"), by their attorneys for their Complaint against Defendants C.D.S. Inc. and CDS SARL (collectively "CDS," or the "CDS Defendants"), and against Defendants Jerome Marechaux, Diane Treat, Christelle Riot, Jerome Viollon, and Christophe Racle (collectively the "Individual Defendants") allege as follows:

STATEMENT OF RELATED CASES

1. The present case is related to the *C.D.S. Inc. v. Zetler, et al*, Civ. Action No. 16 Civ. 3199 (VM) (JLC) (filed Apr. 29, 2016) pending before this Court. Both cases are between the same parties, with the exception of the Nominal Defendants in each case, and share certain background facts.

NATURE OF THE ACTION

2. This is an action for Federal Trademark infringement of the registered service marks "PORTFOLIOPAD" and "CASTINGPAD" (the "Registered Marks") under the Lanham Trademark Act of 1946, Title 15 U.S.C. §§ 1051 et seq. (the "Lanham Act"), for False Designations of Origin and False Descriptions of the software services provided under the PORTFOLIOPAD and CASTINGPAD trademarks under the Lanham Act, and for common law Unfair Competition and Defamation. True and correct copies of the Certificates of Registration for the Registered Marks are attached hereto as **Exhibit A**.

3. Plaintiffs bring this action due to i) Defendants' recent unfounded accusations of business blackmail and untrustworthiness against Plaintiffs, which Defendants published to Plaintiffs' clients and potential clients; and ii) Defendants' refusal to stop using Plaintiffs' PORTFOLIOPAD and CASTINGPAD marks and to stop making statements that falsely claim or imply that Defendants, and not Plaintiffs, are the source and origin of the services bearing those marks.

4. Plaintiffs seek injunctive relief and pecuniary damages, including punitive and treble damages, litigation costs and attorney fees. Plaintiffs also seek to hold the Individual Defendants personally liable for the unlawful acts of the CDS Defendants because, as officers, directors and controlling shareholders of the CDS Defendants, on information and belief the

Individual Defendants have been the moving, active and conscious force behind the CDS Defendants' unlawful acts directed at harming Plaintiffs.

THE PARTIES

5. Plaintiff **Rapid Systems CC** is a "close corporation" formed under the laws of the Republic of South Africa.

6. Plaintiff **Mainboard LLC** is a limited liability company formed under the laws of Delaware.

7. Plaintiff **Bradley Zetler** is an individual domiciled in Cape Town, South Africa. He is a citizen of both the Republic of South Africa and the United States. He is the sole owner of plaintiffs Rapid Systems CC and Mainboard LLC.

8. On information and belief, Defendant **C.D.S. Inc.** is a corporation formed under the laws of Delaware, with a principal place of business in New York City.

9. On information and belief, Defendant **Jerome Marechaux** is a citizen and resident of France and is the controlling shareholder of C.D.S. Inc. and the 92% owner of CDS SARL.

10. On information and belief, Defendant **Jerome Viollon** is a citizen and resident of France, is employed by Jerome Marechaux's company CDS SARL, owns a 3% stake in that company, and serves as a director of C.D.S. Inc.

11. On information and belief, Defendant **Christelle Riot** is a citizen and resident of France, is employed by Jerome Marechaux's company CDS SARL, owns a 5% stake in that company, and serves as a director of C.D.S. Inc.

12. On information and belief, Defendant **Christophe Racle** is a citizen and resident of France, is employed by Jerome Marechaux's company CDS SARL, and serves as a director of C.D.S. Inc.

13. On information and belief, defendant **Diane Treat** is a resident of New York State and serves as the "President" of C.D.S. Inc.

14. On information and belief, Defendant **CDS SARL** is a company formed under the laws of France. On May 22, 2017, the Commercial Court of Paris opened an insolvency proceeding under French law for CDS SARL.

15. Nominal defendant **Isabelle Didier** is named as a party due to CDS SARL's insolvency proceeding. On May 22, 2017, the Commercial Court of Paris appointed Ms. Didier as judicial administrator in the insolvency proceeding. No claim is asserted against Ms. Didier.

16. Nominal defendant **Jean-Charles Demortier** is named as a party due to CDS SARL's insolvency proceeding. On May 22, 2017, the Commercial Court of Paris appointed Mr. Demortier as creditors' representative in the insolvency proceeding. No claim is asserted against Mr. Demortier.

JURISDICTION AND VENUE

17. Plaintiffs bring this action under the Lanham Trademark Act, 15 U.S.C. §§ 1051 *et seq*. (the "Lanham Act"), and common law, against Defendants for, *inter alia*, trademark infringement and willful trademark infringement of Plaintiffs' registered trademarks, false designations of origin and false descriptions regarding Plaintiffs' products and services, defamation, and unfair competition.

18. This Court has subject matter jurisdiction pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. § 1331, 1332 and 1338 over causes of action arising under the Lanham Act, and pursuant to 28 U.S.C. § 1338 and 1367 over the other causes of action.

19. C.D.S. Inc. is subject to personal jurisdiction in this Court because its principle place of business is within this judicial district.

20. The Court has personal jurisdiction over CDS SARL pursuant to New York C.P.L.R. § 302 at least because its acts have caused injury to Mainboard LLC and the other Plaintiffs in this judicial district (as detailed herein), CDS SARL has directed actions towards MainBoard LLC in this district, CDS SARL derives substantial revenue from its business in this judicial district, and the claims against CDS SARL arise from or relate to CDS SARL's contacts with New York.

21. Upon information and belief, Individual Defendant Diane Treat is a domiciliary of this State and therefore subject to jurisdiction pursuant to New York C.P.L.R. § 301.

22. This Court has personal jurisdiction over the Individual Defendants pursuant to New York C.P.L.R. § 302, because, on information and belief, they conduct substantial business in New York. On information and belief, the Individual Defendants are additionally subject to personal jurisdiction in this Court because of their tortious acts causing injury to Mainboard LLC and the other Plaintiffs in this judicial district (as detailed herein) and because of their control over tortious acts committed by the CDS Defendants in this judicial district, control that is exercised by Jerome Marechaux as a controlling shareholder, is exercised by Jerome Viollon, Christelle Riot, and Christophe Racle as directors of C.D.S. Inc., and is

exercised by Diane Treat as an officer of C.D.S. Inc., and because the claims against them arise from or relate to their contacts with New York.

23. Venue is proper under 28 U.S.C. § 1391.

FACTUAL BACKGROUND

Rapid Systems Develops PORTFOLIOPAD and CASTINGPAD.

24. In the late 1990's, Bradley Zetler's original company, Zetler's Function Junction (d/b/a Faces), predecessor to Rapid Systems, created an online software system that allowed electronic delivery of images anywhere in the world. The system was aimed at replacing the then existing practice of model agencies to mail hardcopy images, cards, and brochures of their models.

25. In 2000, Mr. Zetler founded Rapid Systems as a "close corporation" under the laws of the Republic of South Africa to streamline the development, sales and marketing of digital services to model agencies. Since 2002, Bradley Zetler has been and still is the controlling shareholder of Rapid Systems.

26. Building on its prior software and success, in early 2001, Rapid Systems created a software application under the name "PORTFOLIOPAD." Rapid Systems first used in commerce the name "PORTFOLIOPAD" in association with the software service in or around April 2001

27. The software service provided as PORTFOLIOPAD was, and still is, used to provide a service to various modeling agencies who could use it, among other things, as an electronic and internet based substitute for the traditional "portfolio book" illustrating, for example, the models represented by the particular agency.

28. With the PORTFOLIOPAD software service, Rapid Systems began to successfully compete with other companies serving talent management agencies, including with the CDS Defendants, who, on information and belief, did not have a competing software service.

29. In 2001 Rapid Systems agreed to grant to C.D.S. Inc. and CDS SARL exclusive rights to distribute PORTFOLIOPAD and a license to use the PORTFOLIOPAD mark and name in connection with distributing and providing the PORTFOLIOPAD software service. The agreement was memorialized in an Exclusive Distributorship Agreement ("Distributor Agreement") dated June 1, 2001. A true and correct copy of the Distributor Agreement is provided in **Exhibit B.**

30. In 2003, Rapid Systems and CDS SARL entered into a Franchise Agreement pursuant to which, *inter alia*, Rapid System was permitted to use the "CDS" name in the Republic of South Africa.

31. From time to time, Rapid Systems did business under the CDS trade name consistent with the Franchise Agreement.

32. On information and belief, no company affiliated with the CDS Defendants other than Rapid Systems, was doing business under the "CDS" trade name in the Republic of South Africa.

33. On information and belief, no company affiliated with the CDS Defendants, was registered to do business under the "CDS" name in the Republic of South Africa.

34. On information and belief, between 2001 and 2016, neither C.D.S. Inc., nor CDS SARL has maintained an office located in the Republic of South Africa.

35. In 2003, Rapid Systems developed another online software application, named CASTINGPAD and in or about June 2004 began offering online services under the CASTINGPAD mark.

36. The software service provided as CASTINGPAD was and is an online based software application that allows casting professionals (*e.g.,* clients of model agencies) to manage their entire casting processes. It allows model agency clients, among other things, to manage bookings and stage production online, to electronically create and share casting briefs, and to electronically receive and sort casting submissions.

37. After the success of the CASTINGPAD service, Rapid Systems agreed to grant to C.D.S. Inc. and CDS SARL exclusive rights to distribute the CASTINGPAD software service and a license to use the CASTINGPAD mark and name in connection with distributing and providing the software service. The agreement to include, *inter alia*, CASTINGPAD in the Distributor Agreement was memorialized in an Addendum to the Distributor Agreement dated November 1, 2004 ("Amendment"). A true and correct copy of the Addendum To The Exclusive Distributorship Agreement is provided in **Exhibit C.**

38. The Distributor Agreement expressly provides that all Intellectual Property, including trademarks and tradenames, associated with PORTFOLIOPAD are owned by Rapid Systems. For example, the Distributor Agreement states:

> Distributors [i.e., (C.D.S. Inc. and CDS SARL)] recognize that the Trade Mark PORTFOLIOPAD and all trade or registered marks, trade name, copyright, etc., which currently or in the future will be used in relation with the Contractual Products (hereinafter the "Trade Mark'') are the exclusive property of RS. Distributors therefore expressly recognize that they have neither title nor any right over these Trade Marks.

See **Exhibit B** (Distributor Agreement) § 11.1

39. With the addition of CASTINGPAD to the "Contractual Products" under the Amendment (*See* **Exhibit C** (Amendment), § 2.1.6), the Distributor Agreement as Amended expressly provided that all Intellectual Property, including trademark and tradenames, associated with CASTINGPAD were also owned by Rapid Systems. For example, the Distributor Agreement states:

> Distributors [i.e., (C.D.S. Inc. and CDS SARL)] acknowledge that their rights to use the Intellectual Property Rights of the Contractual Products within the Territory are derived solely from RS."

See **Exhibit B** (Distributor Agreement) § 15.1.

Bradley Zetler Creates Mainboard LLC

40. On or about June 30, 2003, Bradley Zetler founded CDS LLC under the laws of Delaware with the intent of one day relocating himself and all of his operations to the United States. On or about August 17, 2016, CDS LLC was renamed to Mainboard LLC (***to avoid confusion with the name of the CDS Defendants, future references to Mainboard LLC, herein, will include CDS LLC***).

41. Since its creation Mainboard LLC has been and still is a Single Member Limited Liability Company, fully owned and controlled by Mr. Zetler.

42. Mr. Zetler, through Mainboard LLC, controlled the use, and management of the PORTFOLIOPAD and CASTINGPAD marks and the software services provided under those marks. Mainboard LLC also was to act as an agent of Rapid Systems in other matters.

43. Mainboard LLC was receiving payments from the CDS Defendants under the Distributor Agreement, and took over the hosting account for the websites offering the PORTFOLIOPAD and CASTINGPAD services. The accounts for those websites were previously held by Rapid Systems. These actions were done with the CDS Defendants' and Jerome Marechaux's knowledge and consent.

The Trademarks

44. Since 2001 Plaintiffs have continuously used in commerce the PORTFOLIOPAD mark in the promotion, marketing, sales and provision of the PORTFOLIOPAD online service.

45. Since 2004 Plaintiffs have continuously used in commerce the CASTINGPAD mark in the promotion, marketing, sales and provision of the CASTINGPAD online service.

46. At all times since 2001, Plaintiffs have controlled the use of the PORTFOLIOPAD mark with respect to the PORTFOLIOPAD software service and quality of that service. For example, the Distributor Agreement expressly provided that, *inter alia*, Rapid Systems must approve any changes to the use of the PORTFOLIOPAD trademarks, Rapid Systems would provide the presentation and information of the PORTFOLIOPAD software services, and imposed quality control with respect to the services. *See, e.g.,* **Exhibit B** (Distributor Agreement) §§ 8, 9.

47. At all times since 2003, Plaintiffs have controlled the use of the CASTINGPAD marks with respect to the CASTINGPAD software service and quality of that service. For example, the Distributor Agreement expressly provided that, *inter alia*, Rapid Systems must approve any changes to the use of the CASTINGPAD (included in the Contractual Products by the Amendment) trademarks, Rapid Systems will provide the presentation and information of the CASTINGPAD software service, and imposed quality control with respect to the services. *See, e.g.,* **Exhibit B** (Distributor Agreement) §§ 8, 9.

48. On or about May 09, 2017, Mainboard LLC obtained Federal Trademark Registrations for PORTFOLIOPAD (Reg. No. 5,198,244) and CASTINGPAD (Reg. No. 5,198,245). *See* **Exhibit A.**

Defendants Unauthorized Use of the Registered Marks
Upon Termination of the Distributor Agreement

49. On or about May 6, 2016, Plaintiffs sent a written notice to the CDS Defendants ("Non-Renewal Notice") informing them of Plaintiffs' intent to not renew the Distributor Agreement at the next renewal date of June 1, 2017. The notice was sent well in advance of the contractually specified deadline prior to the renewal date. *See* **Exhibit B** (Distributor Agreement) § 16.1.

50. On December 6, 2016, Plaintiffs sent a letter ("SARL Termination Letter") to CDS SARL exercising their right to immediately terminate the Distributor Agreement upon the occurrence of a material breach.

51. On May 8, 2017, Plaintiffs delivered a letter to C.D.S. Inc. ("INC Termination Letter") exercising Plaintiffs' right to immediately terminate the Distributor Agreement upon the occurrence of a material breach.

52. The SARL Termination Letter of December 6, 2016, advanced the termination of the Distributor Agreement with CDS SARL by almost six months, as it would have otherwise terminated on May 31, 2017.

53. The INC Termination Letter of May 8, 2017, advanced the termination of the Distributor Agreement with C.D.S. Inc. by approximately three weeks, as it would have otherwise terminated on May 31, 2017.

54. The Distributor Agreement has terminated with respect to both CDS Defendants.

55. Upon termination of the Distributor Agreement, the CDS Defendants lost their license to use the PORTFOLIOPAD and CASTINGPAD marks and to offer the software

services associated with those marks to new customers. *See* **Exhibit B** (Distributor Agreement) § 17.

56. Pursuant to the Distributor Agreement, upon its termination, the CDS Defendants may continue to offer the software services associated with the PORTFOLIOPAD and CASTINGPAD marks only to existing customers under unexpired Service Subscription Agreements that were active at the time the Distributor Agreement terminated. *See* **Exhibit B** (Distributor Agreement) §17.

57. On or about May 18 and 19, 2017, Plaintiffs, through counsel, emailed David Leichtman, counsel for Defendants, requesting that the CDS Defendants remove from their website located at "www.cdsglobal.com" (the "CDS Website") all PORTFOLIOPAD and CASTINGPAD marks. With the same emails, Plaintiffs' counsel also notified Defendants' counsel of the registration of the Registered Marks.

58. The CDS Defendants did not remove any occurrences of the PORTFOLIOPAD and CASTINGPAD names from the CDS Website.

59. On or about May 25, 2017, Plaintiffs, through counsel, sent a letter ("C&D Letter") to Defendants again informing them of the registration of the PORTFOLIOPAD and CASTINGPAD marks. The C&D Letter also requested that by June 2, 2017, the CDS Defendants stop using and remove from the CDS Website the CASTINGPAD and PORTFOLIOPAD marks. The C&D Letter provided a detailed list of locations on the CDS Website, including menus, images, and URLs that contain unauthorized uses of the PORTFOLIOPAD and CASTINGPAD marks. A true and correct copy of the C&D Letter is attached as **Exhibit D**.

60. The C&D Letter also advised that the CDS Defendants may continue to use references to the PORTFOLIOPAD and CASTINGPAD products to the extent necessary to continue providing those services to customers with existing Subscription Agreements. For example, the C&D Letter requested that any links used by existing customers to access the PORTFOLIOPAD and CASTINGPAD services be renamed to identify Mainboard as the source of those services. *See,* e.g., **Exhibit D** (C&D Letter) at p. 2

61. As of June 6, 2016, the CDS website continued to display the all unauthorized occurrences of "PORTFOLIOPAD" and "CASTINGPAD" identified in the C&D Letter. *See, e.g.,* www.cdsglobal.com (*last visited June 6, 2017*)

62. On information and belief the CDS website is maintained and controlled by both C.D.S. Inc. and CDS SARL.

63. On information and belief, the Individual Defendants authorized and approved the continued unauthorized use of the CASTINGPAD and PORTFOLIOPAD marks on the CDS Website.

Defendants Falsely Claim to be the Origin, Creator, and Source of the PORTFOLIOPAD software

64. The CDS website falsely suggests that the CDS Defendants created, own and sell the software services provided under the PORTFOLIOPAD and CASTINGPAD marks. For example, the CDS Website contains numerous references to the PORTFOLIOPAD and CASTINGPAD products and offers to provide those products to new clients (e.g., in the form of "HELP ME DECIDE" which product to use, and "REQUEST A FREE DEMO!" buttons).

65. The CDS Website provides a section titled "Our Products" containing PORTFOLIOPAD and CASTINGPAD links falsely claiming that that CASTINGPAD and PORTFOLIOPAD are products of the CDS Defendants. Those links lead to marketing

webpages that offer to provide the CASTINGPAD and PORTFOLIOPAD services to new customers. *See, e.g.*, www.cdsglobal.com (*last visited, June 6, 2017*).

66. The "Our History" section of the CDS Website further falsely implies that the CDS Defendants are the creators and source of the services provided under the PORTFOLIOPAD mark. For example, the "Our History" section explains that Jerome Marechaux and the CDS Defendants have created an innovative and widely used software solution and digital portfolio creator, which is highly acclaimed by their customers. Immediately after those statements, there is a link inviting website users (*e.g.*, by asking them to "read our clients opinions" [sic]) to review customer testimonials that contain praise for the PORTFOLIOPAD software service, thereby implying that PORTFOLIOPAD is the digital portfolio software solution provided by the CDS Defendants. *See, e.g.*, www.cdsglobal.com/history, http://www.cdsglobal.com/testimonials (*last visited, June 6, 2017*).

67. In a June 1, 2017 email ("June 1 CDS Email"), the CDS Defendants stated that Plaintiffs falsely are asserting ownership over PORTFOLIOPAD, thus implying that not Plaintiffs, but the CDS Defendants are the true source of the service provided as PORTFOLIOPAD.

68. On information and belief the June 1 CDS Email was sent by both C.D.S. Inc. and CDS SARL to at least all their current clients, including clients located in New York and this judicial district. True and correct copies of the June 1 CDS Email are attached as **Exhibit E**.

69. On information and belief, copies of the June 1 CDS Email were sent by C.D.S. Inc., located in NY, and by CDS SARL, located in Paris. *See, e.g.*, **Exhibit E** (emails sent "From: cDs Inc" and from "From: cDs Paris").

70. On information and belief, the Individual Defendants authorized and approved the CDS Defendants' false and misleading statements about the source of the service provided under the PORTFOLIOPAD and CASTINGPAD marks.

Defendants Claim That Plaintiffs are Untrustworthy, Ready to Blackmail, and Make Other False and Defamatory Statements

71. On or about June 1, 2017, Jerome Viollon on behalf of C.D.S. Inc. sent a defamatory email to a New York modeling agency ("June 1 Viollon Email"), stating that Plaintiffs "[do not] hesitate to blackmail, choose to disregard contractual obligations and ignore the applicable law." A true and correct copy of an excerpt of the email chain of June 1 Viollon Email is attached as **Exhibit F**.

72. The defamatory statements that Plaintiffs are ready to blackmail, disregard their contractual obligations and ignore the law in order to achieve their business goals are completely false and are aimed at harming Plaintiffs' business and commercial activities.

73. The CDS Defendants also made false and defamatory statements in the June 1 CDS Email (described above) by omitting important facts and implying that Bradley Zetler lied to a Court under oath. For example, the June 1 CDS Email tells the customers of the CDS Defendants (many of whom are also customers or potential customers of Plaintiffs) that the Second Circuit Court of Appeals "specifically stated that it found Mr. Zetler's testimony to be 'incredible.'" *See* **Exhibit E** (June 1 CDS Email). This statement misleadingly omits that the Court explained that Mr. Zetler's asserted readiness to help the CDS Defendants was difficult to believe (*i.e.*, incredible) given the past interactions between Mr. Zetler and Defendants. The Court did not suggest that Mr. Zetler lied about any facts or otherwise. Specifically, the Court stated that "the district court's finding that Zetler had denied C.D.S. access to certain technical

features . . . renders incredible Zetler's testimony that he stood ready to help" the CDS Defendants. *See, C.D.S. Inc. v. Zetler, et al*, No. 16-2346, at p. 3 (2d Cir., May 31, 2017).

74. The CDS Defendants' misleading omissions and false statements implying that Mr. Zetler lied to a court are highly likely to affect the Plaintiffs' business as Mr. Zetler is the controlling shareholder and manages MainBoard LLC and Rapid Systems CC.

FIRST CLAIM FOR RELIEF:
Trademark Infringement in Violation of the Lanham Act, 35 USC 1114
(against the CDS Defendants)

75. Plaintiffs repeat, reallege, and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

76. This is an action for trademark infringement against the CDS Defendants based on their promotion, advertisement, distribution, sale, and/or offering for sale of services under the Registered Marks.

77. The CDS Defendants, with notice of the registration of the Registered Marks have been and are promoting, advertising, selling, offering for sale, and/or distributing services in interstate commerce under the Registered Marks, without Plaintiffs' permission or consent.

78. The CDS Defendants' infringing activities are likely to cause and have caused confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of the PORTFOLIOPAD and CASTINGPAD Services.

79. The CDS Defendants, without authorization from Plaintiffs, have used the Registered Marks, which are the subject of the U.S. trademark registrations owned by Mainboard

LLC, in connection with the promotion, advertising, distribution, sale and/or offering for sale of the PORTFOLIOPAD and CASTINGPAD Services.

80. The CDS Defendants' acts constitute trademark infringement of the Registered Marks in violation of the Lanham Act, 15 U.S.C. § 1114.

81. The CDS Defendants' trademark infringement has been willful. On information and belief, the Defendants' use of the Registered Marks has been committed and continues to be committed with the knowledge of the registration of the Registered Marks and with the intent to cause confusion and deceive the public, take advantage of the good will associated with the Registered Marks, and/or in willful disregard of the Plaintiffs' rights.

82. Upon information and belief, without a permanent injunction Defendants will continue their infringement of the Registered Marks.

83. CDS Defendants' unlawful actions have caused and are continuing to cause damage to Plaintiffs. Plaintiffs are entitled to recover damages from the CDS Defendants, in an amount adequate to compensate Plaintiffs for CDS Defendants' infringement, including CDS Defendants' profits, any damages sustained by Plaintiffs, as well the costs of the action, including attorney fees. The full measure of damages sustained as a result of CDS Defendants' infringement will be proven at trial.

84. Plaintiffs have suffered and will continue to suffer irreparable injury due to the CDS Defendants' above described acts, if the CDS Defendants are not permanently enjoined.

SECOND CLAIM FOR RELIEF:

Unfair Competition and False Designations of Origin
in Violation of the Lanham Act, 15 U.S.C. § 1125(a)
(against the CDS Defendants)

85. Plaintiffs repeat, reallege, and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

86. The CDS Defendants' have widely advertised, offered for sale, and otherwise provided throughout the United States, including within this District services bearing the PORTFOLIOPAD and CASTINGPAD Marks.

87. The CDS Defendants, have used in connection with their promotion, offers to sell, and provision of services in interstate commerce, false designations of origin and false and misleading description and representation of fact, including words, statements, and marks that wrongly suggest or imply that the CDS Defendants are the creators and are otherwise the source and origin of those services, and which tend to falsely describe or represent such services, and have caused and are likely to further cause confusion as to the origin the services.

88. The CDS Defendants' false designations of origin and false and misleading descriptions and representations of fact have been and are currently made with knowledge of their falsity.

89. For example, a recent email from the CDS Defendants that, on information and belief, was sent to all current clients, states that the Plaintiffs are "falsely asserting ownership over . . . Portfoliopad." In addition the CDS Website explains that the CDS Defendants have created and provide portfolio software and invites the user to review the customer testimonials about that software. The testimonials are replete with praise for the PORTFOLIOPAD portfolio software, creating a very strong, yet false impression that CDS is the source of PORTFOLIOPAD.

90. The CDS Defendants' acts constitute violations of the Lanham Act, 15 U.S.C. § 1125.

91. The CDS Defendants' acts have been willful. On information and belief, the CDS Defendants' have made and continue to make statements of false designation of origin, false and misleading descriptions and representations of fact with the knowledge of their falsity and misleading nature and with the intent to harm Plaintiffs by causing confusion and deceive the public, take advantage of the good will associated with the Plaintiffs PORTFOLIOPAD and CASTINGPAD marks, and/or with willful disregard of the Plaintiff's rights.

92. Upon information and belief, without a permanent injunction the CDS Defendants will continue making statements of false designation of origin and false and misleading descriptions and representations of fact.

93. The CDS Defendants' unlawful actions have caused and are continuing to cause damage to Plaintiffs. Plaintiffs are entitled to recover damages from the CDS Defendants, in an amount adequate to compensate Plaintiffs for the CDS Defendants' false designation of origin and false and misleading descriptions and representations of fact, including the CDS Defendant's profits, any damages sustained by Plaintiffs, as well the costs of the action, including attorney fees. The full measure of damages sustained as a result of the CDS Defendants' infringement will be proven at trial.

94. Plaintiffs have suffered and will continue to suffer irreparable injury due to the CDS Defendants' above described acts, if the CDS Defendants are not permanently enjoined.

THIRD CLAIM FOR RELIEF

Common Law Unfair Competition and Trademark Infringement (against the CDS Defendants)

95. Plaintiffs repeat, reallege, and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

96. Defendants' unlawful appropriation of Plaintiffs' rights through the unauthorized use of the Registered Marks, and through false statements about the source and origin of the PORTFOLIOPAD and CASTINGPAD services has been and continues to be intended to capitalize for the CDS Defendants' own pecuniary gain on the goodwill and excellent reputation of the PORTFOLIOPAD and CASTINGPAD services, which Plaintiffs have expended substantial time, resources and effort to obtain and achieve. Thereby, the CDS Defendants have been unjustly enriched and are benefiting from property rights that rightfully belong to Plaintiffs.

97. Defendants' unlawful appropriation is likely to cause and has caused confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of the Portfolio and CASTINGPAD services.

98. Defendants' unlawful appropriations constitute unfair competition and common law trademark infringement under the laws of the State of New York.

99. Upon information and belief, without a permanent injunction the CDS Defendants will continue their unlawful actions.

100. The CDS Defendants' unlawful actions have caused and are continuing to cause damage to Plaintiffs. Plaintiffs are entitled to recover damages from the CDS Defendants, in an amount adequate to compensate Plaintiffs for the CDS Defendants' infringement. The full measure of damages sustained as a result of the CDS Defendants' infringement will be proven at trial.

101. Plaintiffs have suffered and will continue to suffer irreparable injury due to the CDS Defendants' above described acts, if the CDS Defendants are not permanently enjoined.

FOURTH CLAIM FOR RELIEF

Federal Trademark Infringement, False Designations of Origin, and Unfair Competition (against the Individual Defendants)

102. Plaintiffs repeat, reallege, and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

103. The Individual Defendants, in their capacity as officers, directors, and controlling shareholders of the CDS Defendants, on information and belief, have been the moving, active and conscious force behind the CDS Defendants' unlawful acts, including the CDS Defendants' trademark infringement, unfair competition and false designations of origin under the Lanham Act, and common law unfair competition.

104. On information and belief the Individual Defendants have actively directed the actions of the CDS Defendants with the intent to unjustly enrich themselves personally from the goodwill and hard work of Plaintiffs, and with the intent to harm Plaintiffs.

105. The Individual Defendants know, or have reason to know that Plaintiffs created the software that is used for the services provided as PORTFOLIOPAD and CASTINGPAD, that Plaintiffs are the source of those software services, and that Plaintiffs own the intellectual property associated with those software services, including the PORTFOLIOPAD and CASTINGPAD trademarks.

106. Accordingly, the Individual Defendants are personally liable for the unlawful acts of the CDS Defendants.

107. The Individual Defendants' direction of the CDS Defendants' unlawful acts is likely to cause and has caused confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of the PORTFOLIOPAD and CASTINGPAD services.

108. Upon information and belief, without a permanent injunction the Individual Defendants' will continue to direct the CDS Defendants to act unlawfully and harm Plaintiffs.

109. The CDS Defendants' unlawful actions directed by the Individual Defendants have caused and are continuing to cause damage to Plaintiffs. Plaintiffs are entitled to recover damages from the Individual Defendants, in an amount adequate to compensate Plaintiffs for the Individual Defendants' unlawful actions, including Defendants' profits, any damages sustained by Plaintiffs, as well the costs of the action, including attorney fees. The full measure of damages sustained as a result of Defendants' acts will be proven at trial.

110. Plaintiffs have suffered and will continue to suffer irreparable injury due to the Individual Defendants' above described acts, if the Individual Defendants are not permanently enjoined.

FIFTH CLAIM FOR RELIEF

Defamation
(against the CDS Defendants and Jerome Viollon)

111. Plaintiffs repeat, reallege, and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

112. Viollon acted with bad faith and intentionally or at least negligently published written statements in email communications to a third party, which were false and defamatory in accusing Plaintiffs of "not hesitat[ing] to blackmail, choos[ing] to disregard contractual obligations and ignor[ing] the applicable law"

113. The CDS Defendants acted with bad faith and intentionally or at least negligently published written statements in email communications to third parties, including

Plaintiffs' customers and potential customers, which were false and defamatory in stating an Appeals Court rejected the entire testimony of Bradley Zetler, as "incredible."

114. The CDS Defendants' and Viollon's false statements imply to the customers that Plaintiffs have engaged in, and will engage in illegal and unethical practices and business impropriety.

115. The CDS Defendants' and Viollon's statements are false and defamatory commercial speech, disparaged the integrity and quality of Plaintiffs' commercial activities, and are incompatible with the proper conduct of business.

116. The CDS Defendants' and Viollon's statements are the proximate cause of economic injury to Plaintiffs' business and constitute defamation under common law.

117. On information and belief the CDS Defendants' and Viollon's publication of the above-described false and defamatory statements was done with knowledge of the falsity of such statements, or with reckless disregard for whether they were true or false, or with fault amounting at least to negligence.

118. On information and belief the CDS Defendants' and Viollon's publication of the above-described false and defamatory statements was done with knowledge, reckless disregard, or at least negligence that their conduct would deceive persons who saw the negative statements about Plaintiffs' business.

119. On information and belief the CDS Defendants' and Viollon's publication of the above-described false and defamatory statements was done with the intent to harm Plaintiffs, including without limitation the intent to cause injury to Plaintiffs' business in the State of New York.

120. On information and belief the CDS Defendants' and Viollon's were motivated by ill will toward Plaintiff, and/or its conduct was so outrageous that malice may be implied.

121. Plaintiffs have been damaged by the CDS Defendants' and Viollon's statements, including without limitation harm to Plaintiffs' reputation in the State of New York.

122. Upon information and belief, without a permanent injunction the CDS Defendants and Viollon will continue to publish false and defamatory statements about Plaintiffs.

123. The CDS Defendants' and Viollon's publication of the above-described false and defamatory statements about Plaintiffs have caused and are continuing to cause damage to Plaintiffs. Plaintiffs are entitled to recover damages, including presumed and punitive damages in an amount to be determined by the Court or at trial, as well as Plaintiffs' costs and attorney fees.

124. Plaintiffs have suffered and will continue to suffer irreparable injury due to the above described acts, if the CDS Defendants and Viollon are not permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor against Defendants as follows:

a. That the CDS Defendants have infringed the PORTFOLIOPAD and CASTINGPAD marks in violation of the Lanham Act and that their infringement was willful;

b. That the CDS Defendants have violated the Lanham Act by engaging in unfair competition, and by using false designations of origin and false or misleading description or misrepresentation of fact, and that such violations were willful;

c. That the CDS Defendants engaged in common law unfair competition and Trademark Infringement.

d. That the Individual Defendants are personally liable for trademark infringement, unfair competition and false designations of origin under the Lanham Act, and for common law unfair competition, and that the Individual Defendants' acts were willful.

e. That The CDS Defendants and Viollon defamed Plaintiffs' business with commercial speech and such defamation was committed with intent, malice, reckless disregard or negligence.

f. That the Defendants be ordered to account for and disgorge their profits, and pay Plaintiffs' losses as damages resulting from Defendants' unlawful acts, enumerated above, together with interest and costs, and other damages permitted by the Lanham Act or common law, including enhanced damages up to three times the amount of damages found or measured, Plaintiffs' cost and attorney fees;

g. That Defendants be permanently enjoined from further promoting, advertising, distributing, selling, and/or offering for sale PORTFOLIOPAD and CASTINGPAD services Trademarks and from using without authorization the PORTFOLIOPAD and CASTINGPAD marks;

h. That Defendants be permanently enjoined from further using false designations of origin with respect to the PORTFOLIOPAD and CASTINGPAD;

i. That Defendants be permanently enjoined from further making false and defamatory statements about Plaintiffs business;

j. That Defendants be ordered to undertake corrective advertising, publish an apology, and other corrective actions to reduce the damaging effect of their false and defamatory statements;

k. That Plaintiffs be awarded such other equitable or legal relief as this Court deems just and proper under the circumstances.

JURY TRIAL DEMAND

Trial by jury of all issues so triable is hereby demanded.

Dated: June 6, 2017

Stoyanov Law P.L.L.C.

By: /s/ *Stefan R. Stoyanov*
Stefan R. Stoyanov (SDNY SS1527)
757 Third Avenue, 20th Floor
New York, NY 10017
E-Mail: Stefan@StoyanovLaw.com
Tel.: (212) 602-1338

Attorney for Plaintiffs